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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/597,318	06/19/2000	Frank Venegas JR.	IDS-10505/14	4057

7590 12/03/2002

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EXAMINER

YIP, WINNIE S

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/597,318

Applicant(s)

VENEGAS, FRANK

Examiner

Winnie Yip

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 1-7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 September 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This office action is in response to applicant's amendment filed on September 20, 2002 .

The request for a continued prosecution application (CPA) under 37 CFR 1.53(d) filed on is acknowledged. 37 CFR 1.53(d)(1) was amended to provide that the prior application of a CPA must be: (1) a utility or plant application that was filed under 35 U.S.C. 111(a) before May 29, 2000, (2) a design application, or (3) the national stage of an international application that was filed under 35 U.S.C. 363 before May 29, 2000. *See Changes to Application Examination and Provisional Application Practice*, interim rule, 65 *Fed. Reg.* 14865, 14872 (Mar. 20, 2000), 1233 *Off. Gaz. Pat. Office* 47, 52 (Apr. 11, 2000). Since a CPA of this application is not permitted under 37 CFR 1.53(d)(1), the improper request for a CPA is being treated as a request for continued examination of this application (RCE) under 37 CFR 1.114. *See id.* at 14866, 1233 *Off. Gaz. Pat. Office* at 48.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 U.S.C. 112

1. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 5, the claimed language “nothing else is required to retain said cover on said stanchion” (line 10) merely recites a negative structural limitation that causes the claims vague and indefinite.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-6 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,4-5, 14, and 17 of U. S. Patent No. ^{5,732,583} 5,235,583. Although the conflicting claims are not identical, they are not patentably distinct of the subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a cover consisting of a sleeve having an elongated body having an enclosed hemispherical top with an interior cavity to be slip fitted on a stanchion.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application that matured into a patent. See also MPEP 804.

Claim Rejections - 35 U.S.C. 102

4. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Deike (US patent No. 4,021,977).

Deike shows and discloses a stanchion and cover assembly comprising a substantially rigid elongated stanchion (12) having a lower end being secured to a fixed anchor (11) which is fixed into the ground and a upper terminal end extending over the ground, a sleeve (13) made of plastic and having an elongated, generally cylindrical body extending between two opposing ends, the sleeve having a generally cylindrical interior cavity and having substantially the same wall thickness, the opposing ends including an opened lower end to receive the elongated member (12), and a closed second end with a closed hemispherically shaped cap (13a), a reflector tape (15) being wrapped around the upper end portion of the sleeve, the sleeve (13) having a length slightly longer than the height of the upper portion of the stanchion (12), and the interior cavity having a cross-sectional shape being slip fitted in an engagement with the upper portion of the elongated stanchion (12).

In regard to claim 2, Deike discloses the sleeve of the cover being urged onto the stanchion in a slip fit engagement inherently by suitable force.

5. Claims 3 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Voegeli (US patent No.3,812,279).

Voegeli shows and discloses a cover (12) comprising a sleeve (12) made of plastic and having an elongated, generally cylindrical body extending between two opposing ends, the sleeve (12) having a generally cylindrical interior cavity, the opposing ends including a closed second end with a closed hemispherically shaped dome top and an opened lower end (25) capable for receiving a vertical stanchion in a slip-fit engagement, the sleeve (12) having a

length capably slightly longer than a high of the upper portion of the stanchion, and said sleeve having a wall of thickness and the thickness of the dome top being substantially the same.

Claim Rejections - 35 U.S.C. 103

6. Claims 1-6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Almond '864 in view of Arth, Jr. '883.

Almond shows and discloses a stanchion and cover assembly comprising a substantially rigid elongated stanchion (12) having a first end being secured the ground and a second end extending over the ground, the rigid elongated stanchion (12) having a shank (22) could be generally cylindrical shaped (see Fig. 3), a sleeve (25) having a generally cylindrical elongated body having an opened end and a opposing closed end, and a generally cylindrical interior cavity extending between the two opposing ends, and the sleeve and the closed end of the sleeve being molded from a plastic material and having substantially the same wall thickness, wherein the interior cavity of the sleeve has a cross-sectional shape being elastically slip fitted in an engagement with the upper portion of the stanchion inherently by suitable forced such that the sleeve forming a cover being retained over on the stanchion without any additional structural element. Although Almond does not define the closed end of the sleeve having a generally hemispherically shaped dome top, Arth, Jr. teaches, as well known in the art, a protective cover (18) covering an elongated stanchion (16), the cover could be formed with a closed, hemispherically shaped dome top (20) with a same shaped internal surface for increasing durability of the cover with a smooth outer surface (see col. 3, lines 43-45 and 49-51). It would

have been obvious to one of ordinary skill in the art at time the invention was made to modify the cover of Almond's assembly having a generally hemispherically shaped dome enclosed top as taught by Arth, Jr. as well known in the art, as an obvious matter of design choice for providing smooth protective cover with a durable top surface to accommodate the shape of the stanchion to be received for various applications.

7. Claims 1-6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Beatty '756 in view of Arth, Jr. '883.

Beatty shows and discloses a stanchion and cover assembly comprising a substantially rigid elongated stanchion (12) having a first end being secured the ground and a second end extending over the ground, the rigid elongated stanchion (12) may have a generally cylindrical shaped (see Fig. 3), a sleeve (18) having a generally cylindrical elongated body having an opened end and a opposing closed end, and a generally cylindrical interior cavity extending between the two opposing ends, and the sleeve and the closed end of the sleeve being molded from a plastic material and having substantially the same wall thickness, wherein the interior cavity of the sleeve (18) has a cross-sectional shape being elastically slip fitted in an engagement with the upper portion of the stanchion (see col. 2, line 19), said the sleeve forming a cover being retained over on the stanchion without any additional structural element. Although Beatty does not define the closed end of the sleeve having a generally hemispherically shaped dome top as claimed, Beatty teaches the closed end of the sleeve may be formed in variety of shapes corresponding to the shape of the stanchion to be received therein (see Figs. 1

and 3). Further, Arth, Jr. teaches a protective cover (18) for covering an elongated stanchion (16), the cover having, as well known in the art, a closed, hemispherically shaped dome top (20) with a same shaped internal surface for increasing durability of the cover with a smooth outer surface (see col. 3, lines 43-45 and 49-51) for covering an elongated stanchion (16). Therefore, it would have been obvious to one of ordinary skill in the art at time the invention was made to modify the cover of Beatty's assembly having a generally hemispherically shaped dome enclosed top as taught by Arth, Jr. as well known in the art, as an obvious matter of design choice for providing a smooth protective cover having a durable top surface accommodated with the shape of the stanchion to be received for various applications.

Response to Amendment

8. The claims 1-6 stand rejected under US 35 102/103 for the same reasons set forth above discussion since applicant does not provide any response thereto.

Citations


9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jaycox '067 and Guntel, Jr. '718 also teach various covers having structural limitations as similar to the claimed invention.

Inquiry Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 703-308-2491. The examiner can normally be reached on M-F (9:30-6:30), Second Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


Winnie Yip
Examiner
Art Unit 3637

wsy
November 27, 2002